

AMENDED IN ASSEMBLY MARCH 28, 1996

AMENDED IN ASSEMBLY MARCH 7, 1996

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1985

Introduced by Assembly Member Speier

(Principal coauthor: Senator Leslie)

(Coauthors: Assembly Members Alpert, Baldwin, Conroy, Cortese, Gallegos, Harvey, Hawkins, Katz, Machado, Margett, Willard Murray, Rainey, Sweeney, and Woods)

(Coauthors: Senators Ayala, Leonard, O'Connell, and Petris)

January 3, 1996

An act to amend Sections 191.5, 193, 193.5, ~~and 1170.12~~ 667, *and 1192.7* of the Penal Code, and to amend Sections 2800.3, 20001, 23104, and 23190 of, to add Section 23180.5 to, ~~and~~ to repeal Section 23185 of, the Vehicle Code, *and to amend Section 2 of Proposition 184*, relating to driving under the influence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1985, as amended, Speier. Driving under the influence: reckless driving.

(1) Under existing law, gross vehicular manslaughter while intoxicated is punishable by imprisonment in the state prison for 4, 6, or 10 years.

This bill would provide that if it is charged and admitted or found to be true that the defendant fled the scene of this

crime, upon conviction for the crime, the defendant shall receive an additional sentence of 5 years in the state prison. The bill also would provide that if the defendant ~~previously had been convicted~~ *has one or more separate violations* of an offense involving driving under the influence, *which resulted in a conviction*, he or she shall receive an additional sentence of 2 years in the state prison for each prior conviction. The bill would provide that probation shall not be granted nor shall the imposition or execution of sentence be suspended for that offense.

(2) Under existing law, vehicular manslaughter with gross negligence, or without gross negligence while under the influence, or manslaughter committed during the operation of a vessel, is punishable by imprisonment in a county jail or in the state prison.

This bill would eliminate punishment by imprisonment in a county jail for those crimes. The bill would further provide that if it is charged and admitted or found to be true that the defendant fled the scene of ~~the crime of vehicular manslaughter without gross negligence while under the influence~~ *any of those crimes*, upon conviction for ~~this~~ *the* crime, he or she shall receive an additional sentence of 5 years in the state prison. The bill would provide that probation shall not be granted nor shall the imposition or execution of sentence be suspended for those offenses.

(3) Existing law, amended by initiative statute, provides for an enhanced punishment for persons who are convicted of a felony who have one or more prior violent or serious felony convictions. ~~The~~ *That law specifically incorporates the definitions of "violent felony" and "serious felony" as they existed on June 30, 1993. Another existing law, added by another initiative statute, defines "serious felony" for those purposes. Both initiative statute provides* ~~statutes provide~~ that any amendment of ~~its~~ *their* provisions by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house.

This bill would ~~apply that enhanced punishment to persons who also have one or more prior convictions for~~ *add to the list of crimes that are considered serious felonies* gross vehicular manslaughter, vehicular manslaughter with gross negligence, or while under the influence without gross negligence,

manslaughter committed during the operation of a vessel, driving under the influence and causing bodily injury under specified circumstances, or those crimes specified in (4) below. This bill would change the reference to the definitions of violent and serious felonies to apply to those definitions as of January 1, 1997. Because it would amend an initiative statute, the bill would require a $\frac{2}{3}$ vote.

(4) Existing law requires the driver of any vehicle involved in an accident resulting in injury or death to another person to stop and exchange specified information with the other drivers involved. Under existing law, the punishment for a person who is convicted of willfully fleeing or attempting to elude a pursuing peace officer and thereby causing death or serious bodily injury to any person, or for a person convicted of reckless driving which causes great bodily injury who previously has been convicted of reckless driving or driving under the influence, is imprisonment in the state prison or in a county jail for not more than one year, or by a fine or both the fine and imprisonment.

This bill would eliminate punishment by imprisonment in a county jail for those crimes, thereby making those crimes felonies. The bill would provide that probation shall not be granted nor shall the imposition or execution of sentence be suspended for those offenses.

(5) Under existing law, the punishment for a conviction of driving under the influence and causing bodily injury is imprisonment in the state prison or in a county jail and by a fine. Under existing law, any person who personally inflicts great bodily injury on any person other than an accomplice in the commission or attempted commission of a felony, shall be punished by an additional term of imprisonment of 3 years, except as specified. If that injury causes the victim to become comatose or the victim is 70 years of age or older, existing ~~laws~~ law prescribes an additional term of 5 years. If the injury is inflicted under circumstances involving domestic violence, the additional term is 3, 4, or 5 years.

This bill would provide that any person who personally inflicts great bodily injury on a person while driving under the influence shall be punished according to the above provisions, for each victim *whose injury qualifies under the above*



provisions. The bill would provide that probation shall not be granted nor shall the execution or imposition of sentence be suspended for a conviction of that offense.

(6) Under existing law, if a person who is convicted of driving under the influence and causing bodily injury previously has been convicted of a separate violation of that offense or other offenses involving driving under the influence within 7 years, the person shall be punished by imprisonment in the state prison or in a county jail and by a fine. If the person previously has been convicted of 2 or more separate violations of that offense or other offenses involving driving under the influence within 7 years, the punishment is imprisonment in the state prison for 2, 3, or 4 years and by a fine.

This bill would provide that if a person ~~previously has been convicted of~~ *has one or more separate violations* of any of those offenses within any time period, *which resulted in convictions*, he or she shall be punished by a term of 4, 6, or 8 years and by a fine. The bill would provide that probation shall not be granted nor shall the imposition or execution of sentence be suspended for that offense.

(7) Because the bill would increase the penalties for several crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited
2 as "Courtney's Law," in memory of Courtney Cheney of
3 Roseville, who was killed by a drunken driver with a long
4 history of driving under the influence.

1 SEC. 2. Section 191.5 of the Penal Code is amended to
2 read:

3 191.5. (a) Gross vehicular manslaughter while
4 intoxicated is the unlawful killing of a human being
5 without malice aforethought, in the driving of a vehicle,
6 where the driving was in violation of Section 23140, 23152,
7 or 23153 of the Vehicle Code, and the killing was either
8 the proximate result of the commission of an unlawful act,
9 not amounting to a felony, and with gross negligence, or
10 the proximate result of the commission of a lawful act
11 which might produce death, in an unlawful manner, and
12 with gross negligence.

13 (b) Gross vehicular manslaughter while intoxicated
14 also includes operating a vessel in violation of subdivision
15 (b), (c), (d), (e), or (f) of Section 655 of the Harbors and
16 Navigation Code, and in the commission of an unlawful
17 act, not amounting to felony, and with gross negligence;
18 or operating a vessel in violation of subdivision (b), (c),
19 (d), (e), or (f) of Section 655 of the Harbors and
20 Navigation Code, and in the commission of a lawful act
21 which might produce death, in an unlawful manner, and
22 with gross negligence.

23 (c) Gross vehicular manslaughter while intoxicated is
24 punishable by imprisonment in the state prison for 4, 6,
25 or 10 years. *Probation shall not be granted and the*
26 *execution or imposition of sentence shall not be*
27 *suspended. There shall not be a commitment to any*
28 *facility other than the state prison.*

29 (d) A person who is convicted of violating this section
30 ~~who previously has been convicted of one or more who~~
31 *has one or more* separate violations of this section or
32 paragraph (1) or (3) of subdivision (c) of Section 192,
33 *subdivision (a) or (c) of Section 192.5*, or of Section 23103,
34 as specified in Section 23103.5, 23152, or 23153 of the
35 Vehicle Code, ~~whether as~~ *which resulted in a conviction*
36 *of either* a misdemeanor or felony, shall be punished, in
37 addition and consecutive to the punishment prescribed
38 for violating this section, by an additional term of
39 imprisonment of two years in the state prison for each
40 separate conviction. An additional term shall not be

1 imposed unless the allegation is charged in the accusatory
2 pleading and admitted by the defendant or found to be
3 true by the trier of fact. The court shall not strike a finding
4 that brings a person within the provisions of this
5 subdivision or an allegation made pursuant to this
6 subdivision.

7 (e) An additional term or terms imposed by ~~this~~
8 ~~section~~ *subdivision (d)* shall be in addition to any other
9 punishment that may be imposed and shall not be limited
10 by any other provision.

11 (f) Probation shall not be granted nor shall execution
12 or imposition of the sentence be suspended for a
13 conviction of any offense proscribed by this section.
14 There shall not be a commitment to any facility other
15 than the state prison.

16 (g) This section shall not be construed as prohibiting
17 or precluding a charge of murder under Section 188 upon
18 facts exhibiting wantonness and a conscious disregard for
19 life to support a finding of implied malice, or upon facts
20 showing malice consistent with the holding of the
21 California Supreme Court in *People v. Watson*, 30 Cal. 3d
22 290.

23 (h) This section shall not be construed as making any
24 homicide in the driving of a vehicle or the operation of a
25 vessel punishable which is not a proximate result of the
26 commission of an unlawful act, not amounting to felony,
27 or of the commission of a lawful act which might produce
28 death, in an unlawful manner.

29 SEC. 3. Section 193 of the Penal Code is amended to
30 read:

31 193. (a) Voluntary manslaughter is punishable by
32 imprisonment in the state prison for 3, 6, or 11 years.

33 (b) Involuntary manslaughter is punishable by
34 imprisonment in the state prison for two, three, or four
35 years.

36 (c) Vehicular manslaughter is punishable as follows:

37 (1) A violation of paragraph (1) of subdivision (c) of
38 Section 192 is punishable by imprisonment in the state
39 prison for two, four, or six years.

(2) A violation of paragraph (2) of subdivision (c) of Section 192 is punishable by imprisonment in the county jail for not more than one year.

(3) A violation of paragraph (3) of subdivision (c) of Section 192 is punishable by imprisonment in the state prison for 16 months or two or four years.

(4) Probation shall not be granted nor shall execution or imposition of the sentence be suspended for a *felony* conviction of vehicular manslaughter. There shall not be a commitment to any facility other than the state prison.

SEC. 4. Section 193.5 of the Penal Code is amended to read:

193.5. Manslaughter committed during the operation of a vessel is punishable as follows:

(a) A violation of subdivision (a) of Section 192.5 is punishable by imprisonment in the state prison for two, four, or six years.

(b) A violation of subdivision (b) of Section 192.5 is punishable by imprisonment in the county jail for not more than one year.

(c) A violation of subdivision (c) of Section 192.5 is punishable by imprisonment in the state prison for 16 months or two or four years.

(d) Probation shall not be granted nor shall execution or imposition of the sentence be suspended for a *felony* conviction under this section. There shall not be a commitment to any facility other than a state prison.

~~SEC. 5. Section 1170.12 of the Penal Code is amended to read:~~

~~1170.12. (a) Notwithstanding any other provision of law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:~~

~~(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.~~

~~(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.~~

~~(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.~~

~~(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.~~

~~(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not exceed one fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.~~

~~(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.~~

~~(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6) of this subdivision, the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.~~

~~(8) Any sentence imposed pursuant to this section will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.~~

~~(b) Notwithstanding any other provision of law and for the purposes of this section, a prior conviction of a felony shall be defined as:~~

~~(1) Any offense defined in subdivision (c) of Section 667.5 as a violent felony, any offense defined in subdivision (c) of Section 1192.7 as a serious felony, or any act in violation of Section 191.5 or paragraph (1) or (3) of subdivision (c) of Section 192 of this code, Section 2800.3 of, or subdivision (b) of Section 23104 of, the Vehicle Code, Section 23153 of the Vehicle Code if the act~~

1 involved serious bodily injury as defined in subdivision
2 (a) of Section 417.6, or Section 23153 of the Vehicle Code
3 if the act involved any bodily injury and the offender
4 previously was convicted under Section 23103.5, 23152, or
5 23153 of the Vehicle Code. The determination of whether
6 a prior conviction is a prior felony conviction for purposes
7 of this section shall be made upon the date of that prior
8 conviction and is not affected by the sentence imposed
9 unless the sentence automatically, upon the initial
10 sentencing, converts the felony to a misdemeanor. None
11 of the following dispositions shall affect the
12 determination that a prior conviction is a prior felony for
13 purposes of this section:

14 (A) The suspension of imposition of judgment or
15 sentence.

16 (B) The stay of execution of sentence.

17 (C) The commitment to the State Department of
18 Health Services as a mentally disordered sex offender
19 following a conviction of a felony.

20 (D) The commitment to the California Rehabilitation
21 Center or any other facility whose function is
22 rehabilitative diversion from the state prison.

23 (2) A conviction in another jurisdiction for an offense
24 that, if committed in California, is punishable by
25 imprisonment in the state prison. A prior conviction of a
26 particular felony shall include a conviction in another
27 jurisdiction for an offense that includes all of the elements
28 of the particular felony as defined in subdivision (c) of
29 Section 667.5 or subdivision (c) of Section 1192.7.

30 (3) A prior juvenile adjudication shall constitute a
31 prior felony conviction for purposes of sentence
32 enhancement if:

33 (A) The juvenile was 16 years of age or older at the
34 time he or she committed the prior offense, and

35 (B) The prior offense is

36 (i) listed in subdivision (b) of Section 707 of the
37 Welfare and Institutions Code, or

38 (ii) listed in this subdivision as a felony, and

39 (C) The juvenile was found to be a fit and proper
40 subject to be dealt with under the juvenile court law, and

~~(D) The juvenile was adjudged a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code because the person committed an offense listed in subdivision (b) of Section 707 of the Welfare and Institutions Code.~~

~~(e) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following shall apply where a defendant has a prior felony conviction:~~

~~(1) If a defendant has one prior felony conviction that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.~~

~~(2) (A) If a defendant has two or more prior felony convictions, as defined in paragraph (1) of subdivision (b), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of~~

~~(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior felony convictions; or~~

~~(ii) twenty-five years or~~

~~(iii) the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any period prescribed by Section 190 or 3046.~~

~~(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.~~

1 ~~(d) (1) Notwithstanding any other provision of law,~~
2 ~~this section shall be applied in every case in which a~~
3 ~~defendant has a prior felony conviction as defined in this~~
4 ~~section. The prosecuting attorney shall plead and prove~~
5 ~~each prior felony conviction except as provided in~~
6 ~~paragraph (2).~~

7 ~~(2) The prosecuting attorney may move to dismiss or~~
8 ~~strike a prior felony conviction allegation in the~~
9 ~~furtherance of justice pursuant to Section 1385, or if there~~
10 ~~is insufficient evidence to prove the prior conviction. If~~
11 ~~upon the satisfaction of the court that there is insufficient~~
12 ~~evidence to prove the prior felony conviction, the court~~
13 ~~may dismiss or strike the allegation.~~

14 ~~(c) Prior felony convictions shall not be used in plea~~
15 ~~bargaining, as defined in subdivision (b) of Section 1192.7.~~
16 ~~The prosecution shall plead and prove all known prior~~
17 ~~felony convictions and shall not enter into any agreement~~
18 ~~to strike or seek the dismissal of any prior felony~~
19 ~~conviction allegation except as provided in paragraph (2)~~
20 ~~of subdivision (d).~~

21 ~~SEC. 6.~~

22 *SEC. 5. Section 667 of the Penal Code is amended to*
23 *read:*

24 667. (a) (1) In compliance with subdivision (b) of
25 Section 1385, any person convicted of a serious felony who
26 previously has been convicted of a serious felony in this
27 state or of any offense committed in another jurisdiction
28 which includes all of the elements of any serious felony,
29 shall receive, in addition to the sentence imposed by the
30 court for the present offense, a five-year enhancement for
31 each such prior conviction on charges brought and tried
32 separately. The terms of the present offense and each
33 enhancement shall run consecutively.

34 (2) This subdivision shall not be applied when the
35 punishment imposed under other provisions of law would
36 result in a longer term of imprisonment. There is no
37 requirement of prior incarceration or commitment for
38 this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, “serious felony” means a serious felony listed in subdivision (c) of Section 1192.7.

(5) This subdivision shall not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of subdivision (c) of Section 1192.7.

(b) It is the intent of the Legislature in enacting subdivisions (b) to ~~to~~ (h), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious ~~and/or~~ or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter

1 7 of Title 1 of Part 3 shall not exceed one-fifth of the total
2 term of imprisonment imposed and shall not accrue until
3 the defendant is physically placed in the state prison.

4 (6) If there is a current conviction for more than one
5 felony count not committed on the same occasion, and
6 not arising from the same set of operative facts, the court
7 shall sentence the defendant consecutively on each count
8 pursuant to subdivision (e).

9 (7) If there is a current conviction for more than one
10 serious or violent felony as described in paragraph (6),
11 the court shall impose the sentence for each conviction
12 consecutive to the sentence for any other conviction for
13 which the defendant may be consecutively sentenced in
14 the manner prescribed by law.

15 (8) Any sentence imposed pursuant to subdivision (e)
16 will be imposed consecutive to any other sentence which
17 the defendant is already serving, unless otherwise
18 provided by law.

19 (d) Notwithstanding any other law and for the
20 purposes of subdivisions (b) to ~~(i)~~ (h), inclusive, a prior
21 conviction of a felony shall be defined as:

22 (1) Any offense defined in subdivision (c) of Section
23 667.5 as a violent felony or any offense defined in
24 subdivision (c) of Section 1192.7 as a serious felony in this
25 state. The determination of whether a prior conviction is
26 a prior felony conviction for purposes of subdivisions (b)
27 to ~~(i)~~ (h), inclusive, shall be made upon the date of that
28 prior conviction and is not affected by the sentence
29 imposed unless the sentence automatically, upon the
30 initial sentencing, converts the felony to a misdemeanor.
31 None of the following dispositions shall affect the
32 determination that a prior conviction is a prior felony for
33 purposes of subdivisions (b) to ~~(i)~~ (h), inclusive:

34 (A) The suspension of imposition of judgment or
35 sentence.

36 (B) The stay of execution of sentence.

37 (C) The commitment to the State Department of
38 Health Services as a mentally disordered sex offender
39 following a conviction of a felony.

1 (D) The commitment to the California Rehabilitation
2 Center or any other facility whose function is
3 rehabilitative diversion from the state prison.

4 (2) A conviction in another jurisdiction for an offense
5 that, if committed in California, is punishable by
6 imprisonment in the state prison. A prior conviction of a
7 particular felony shall include a conviction in another
8 jurisdiction for an offense that includes all of the elements
9 of the particular felony as defined in subdivision (c) of
10 Section 667.5 or subdivision (c) of Section 1192.7.

11 (3) A prior juvenile adjudication shall constitute a
12 prior felony conviction for purposes of sentence
13 enhancement if:

14 (A) The juvenile was 16 years of age or older at the
15 time he or she committed the prior offense.

16 (B) The prior offense is listed in subdivision (b) of
17 Section 707 of the Welfare and Institutions Code or
18 described in paragraph (1) or (2) as a felony.

19 (C) The juvenile was found to be a fit and proper
20 subject to be dealt with under the juvenile court law.

21 (D) The juvenile was adjudged a ward of the juvenile
22 court within the meaning of Section 602 of the Welfare
23 and Institutions Code because the person committed an
24 offense listed in subdivision (b) of Section 707 of the
25 Welfare and Institutions Code.

26 (e) For purposes of subdivisions (b) to ~~(i)~~ (h),
27 inclusive, and in addition to any other enhancement or
28 punishment provisions which may apply, the following
29 shall apply where a defendant has a prior felony
30 conviction:

31 (1) If a defendant has one prior felony conviction that
32 has been pled and proved, the determinate term or
33 minimum term for an indeterminate term shall be twice
34 the term otherwise provided as punishment for the
35 current felony conviction.

36 (2) (A) If a defendant has two or more prior felony
37 convictions as defined in subdivision (d) that have been
38 pled and proved, the term for the current felony
39 conviction shall be an indeterminate term of life



1 imprisonment with a minimum term of the
2 indeterminate sentence calculated as the greater of:

3 (i) Three times the term otherwise provided as
4 punishment for each current felony conviction
5 subsequent to the two or more prior felony convictions.

6 (ii) Imprisonment in the state prison for 25 years.

7 (iii) The term determined by the court pursuant to
8 Section 1170 for the underlying conviction, including any
9 enhancement applicable under Chapter 4.5
10 (commencing with Section 1170) of Title 7 of Part 2, or
11 any period prescribed by Section 190 or 3046.

12 (B) The indeterminate term described in
13 subparagraph (A) shall be served consecutive to any
14 other term of imprisonment for which a consecutive term
15 may be imposed by law. Any other term imposed
16 subsequent to any indeterminate term described in
17 subparagraph (A) shall not be merged therein but shall
18 commence at the time the person would otherwise have
19 been released from prison.

20 (f) (1) Notwithstanding any other law, subdivisions
21 (b) to ~~(i)~~ (h), inclusive, shall be applied in every case in
22 which a defendant has a prior felony conviction as
23 defined in subdivision (d). The prosecuting attorney shall
24 plead and prove each prior felony conviction except as
25 provided in paragraph (2).

26 (2) The prosecuting attorney may move to dismiss or
27 strike a prior felony conviction allegation in the
28 furtherance of justice pursuant to Section 1385, or if there
29 is insufficient evidence to prove the prior conviction. If
30 upon the satisfaction of the court that there is insufficient
31 evidence to prove the prior felony conviction, the court
32 may dismiss or strike the allegation.

33 (g) Prior felony convictions shall not be used in plea
34 bargaining as defined in subdivision (b) of Section 1192.7.
35 The prosecution shall plead and prove all known prior
36 felony convictions and shall not enter into any agreement
37 to strike or seek the dismissal of any prior felony
38 conviction allegation except as provided in paragraph (2)
39 of subdivision (f).

1 (h) All references to ~~existing~~ statutes in subdivisions
2 (c) to (g), inclusive, are to statutes as they ~~existed~~ *exist*
3 ~~on June 30, 1993~~ *January 1, 1997*.

4 (i) If any provision of subdivisions (b) to ~~(h)~~ (g),
5 inclusive, or the application thereof to any person or
6 circumstance is held invalid, that invalidity shall not
7 affect other provisions or applications of those
8 subdivisions which can be given effect without the invalid
9 provision or application, and to this end the provisions of
10 those subdivisions are severable.

11 (j) The provisions of this section shall not be amended
12 by the Legislature except by statute passed in each house
13 by rollcall vote entered in the journal, two-thirds of the
14 membership concurring, or by a statute that becomes
15 effective only when approved by the electors.

16 *SEC. 6. Section 1192.7 of the Penal Code is amended*
17 *to read:*

18 1192.7. (a) Plea bargaining in any case in which the
19 indictment or information charges any serious felony, any
20 felony in which it is alleged that a firearm was personally
21 used by the defendant, or any offense of driving while
22 under the influence of alcohol, drugs, narcotics, or any
23 other intoxicating substance, or any combination thereof,
24 is prohibited, unless there is insufficient evidence to
25 prove the people's case, or testimony of a material witness
26 cannot be obtained, or a reduction or dismissal would not
27 result in a substantial change in sentence.

28 (b) As used in this section "plea bargaining" means
29 any bargaining, negotiation, or discussion between a
30 criminal defendant, or his or her counsel, and a
31 prosecuting attorney or judge, whereby the defendant
32 agrees to plead guilty or nolo contendere, in exchange for
33 any promises, commitments, concessions, assurances, or
34 consideration by the prosecuting attorney or judge
35 relating to any charge against the defendant or to the
36 sentencing of the defendant.

37 (c) As used in this section, "serious felony" means any
38 of the following:

39 (1) Murder or voluntary manslaughter; (2) mayhem;
40 (3) rape; (4) sodomy by force, violence, duress, menace,

1 threat of great bodily injury, or fear of immediate and
2 unlawful bodily injury on the victim or another person;
3 (5) oral copulation by force, violence, duress, menace,
4 threat of great bodily injury, or fear of immediate and
5 unlawful bodily injury on the victim or another person;
6 (6) lewd or lascivious act on a child under the age of 14
7 years; (7) any felony punishable by death or
8 imprisonment in the state prison for life; (8) any other
9 felony in which the defendant personally inflicts great
10 bodily injury on any person, other than an accomplice, or
11 any felony in which the defendant personally uses a
12 firearm; (9) attempted murder; (10) assault with intent
13 to commit rape or robbery; (11) assault with a deadly
14 weapon or instrument on a peace officer; (12) assault by
15 a life prisoner on a noninmate; (13) assault with a deadly
16 weapon by an inmate; (14) arson; (15) exploding a
17 destructive device or any explosive with intent to injure;
18 (16) exploding a destructive device or any explosive
19 causing great bodily injury or mayhem; (17) exploding a
20 destructive device or any explosive with intent to
21 murder; (18) burglary of an inhabited dwelling house, or
22 trailer coach as defined by the Vehicle Code, or inhabited
23 portion of any other building; (19) robbery or bank
24 robbery; (20) kidnapping; (21) holding of a hostage by a
25 person confined in a state prison; (22) attempt to commit
26 a felony punishable by death or imprisonment in the state
27 prison for life; (23) any felony in which the defendant
28 personally used a dangerous or deadly weapon; (24)
29 selling, furnishing, administering, giving, or offering to
30 sell, furnish, administer, or give to a minor any heroin,
31 cocaine, phencyclidine (PCP), or any
32 methamphetamine-related drug, as described in
33 paragraph (2) of subdivision (d) of Section 11055 of the
34 Health and Safety Code, or any of the precursors of
35 methamphetamines, as described in subparagraph (A) of
36 paragraph (1) of subdivision (f) of Section 11055 or
37 subdivision (a) of Section 11100 of the Health and Safety
38 Code; (25) any violation of subdivision (a) of Section 289
39 where the act is accomplished against the victim's will by
40 force, violence, duress, menace, or fear of immediate and

1 unlawful bodily injury on the victim or another person;
2 (26) grand theft involving a firearm; (27) carjacking; any
3 attempt to commit a crime listed in this subdivision other
4 than an assault; ~~and (20)~~ (28) offenses involving driving
5 under the influence and causing great bodily injury or
6 death, in violation of Section 191.5, paragraph (1) or (3)
7 of subdivision (c) of Section 192, or subdivision (a) or (c)
8 of Section 192.5, or of the following provisions of the
9 Vehicle Code: Section 2800.3, subdivision (b) of Section
10 23104, Section 23153 if the act resulted in great bodily
11 injury to any person other than the defendant, or Section
12 23153 if the act resulted in any bodily injury and the
13 offender has one or more separate violations of Section
14 23103 as specified in Section 23103.5, 23152, or 23153 which
15 resulted in a conviction; and (29) any conspiracy to
16 commit an offense described in paragraph (24) as it
17 applies to Section 11370.4 of the Health and Safety Code
18 where the defendant conspirator was substantially
19 involved in the planning, direction, or financing of the
20 underlying offense.

21 (d) As used in this section, “bank robbery” means to
22 take or attempt to take, by force or violence, or by
23 intimidation from the person or presence of another any
24 property or money or any other thing of value belonging
25 to, or in the care, custody, control, management, or
26 possession of, any bank, credit union, or any savings and
27 loan association.

28 As used in this subdivision, the following terms have the
29 following meanings:

30 (1) “Bank” means any member bank of the Federal
31 Reserve System, and any bank, banking association, trust
32 company, savings bank, or other banking institution
33 organized or operating under the laws of the United
34 States, and any bank the deposits of which are insured by
35 the Federal Deposit Insurance Corporation.

36 (2) “Savings and loan association” means any federal
37 savings and loan association and any “insured institution”
38 as defined in Section 401 of the National Housing Act, as
39 amended, and any federal credit union as defined in
40 Section 2 of the Federal Credit Union Act.

(3) "Credit union" means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

(e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 7. Section 2800.3 of the Vehicle Code is amended to read:

2800.3. (a) Whenever willful flight or attempt to elude a pursuing peace officer in violation of Section 2800.1 proximately causes death or serious bodily injury to any person, the person driving the pursued vehicle, upon conviction, shall be punished by imprisonment in the state prison for two, three, or four years and by a fine of not less than one thousand dollars (\$1,000) nor more than ten thousand dollars (\$10,000).

For purposes of this section, "serious bodily injury" has the same meaning as defined in paragraph (5) of subdivision (f) of Section 243 of the Penal Code.

(b) Probation shall not be granted nor shall execution or imposition of the sentence be suspended for a conviction of a violation of this section. There shall not be a commitment to any facility other than the state prison.

~~SEC. 7.~~

SEC. 8. Section 20001 of the Vehicle Code is amended to read:

20001. (a) The driver of any vehicle involved in an accident resulting in injury to any person, other than himself or herself, or in death of any person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.

(b) (1) Except as provided in paragraph (2), any violation of subdivision (a) shall be punished by imprisonment in the state prison, or in the county jail for not more than one year, or by a fine of not less than one

1 thousand dollars (\$1,000) nor more than ten thousand
2 dollars (\$10,000), or by both fine and imprisonment.

3 (2) Any violation of subdivision (a) which results in
4 death or permanent, serious injury shall be punished by
5 imprisonment in the state prison for two, three, or four
6 years, or in the county jail for not less than 90 days nor
7 more than one year, or by a fine of not less than one
8 thousand dollars (\$1,000) nor more than ten thousand
9 dollars (\$10,000), or by both fine and imprisonment.
10 However, the court may, in the interests of justice and for
11 reasons stated in the record, reduce or eliminate the
12 minimum imprisonment required by this paragraph.

13 As used in this paragraph, “permanent, serious injury”
14 means loss or permanent impairment of function of any
15 bodily member or organ.

16 (3) In imposing the minimum fine required by this
17 subdivision, the court shall take into consideration the
18 defendant’s ability to pay the fine and may, in the
19 interests of justice and for reasons stated in the record,
20 reduce the amount of that minimum fine to less than the
21 amount otherwise required by this subdivision.

22 (c) A person who flees the scene of the crime after
23 committing a violation of Section 191.5, paragraph (1) or
24 (3) of subdivision (c) of Section 192, ~~subdivision (e) of~~
25 ~~Section 193, or Section 193.5 of the Penal Code, shall be~~
26 *or subdivision (a) or (c) of Section 192.5, shall be*
27 punished, in addition and consecutive to the punishment
28 prescribed for violating this section, by an additional term
29 of imprisonment of five years in the state prison. That
30 additional term shall not be imposed unless the allegation
31 is charged in the accusatory pleading and admitted by the
32 defendant or found to be true by the trier of fact. The
33 court shall not strike a finding that brings a person within
34 the provisions of this subdivision or an allegation made
35 pursuant to this subdivision.

36 (d) An additional term imposed by ~~this section~~
37 *subdivision (c)* shall be in addition to any other
38 punishment that may be imposed and shall not be limited
39 by any other provision.

1 ~~(c) Probation shall not be granted nor shall execution~~
2 ~~or imposition of the sentence be suspended for an~~
3 ~~enhancement imposed pursuant to subdivision (c).~~
4 ~~There shall not be a commitment to any facility other~~
5 ~~than the state prison for that additional term.~~

6 ~~SEC. 8.~~

7 SEC. 9. Section 23104 of the Vehicle Code is amended
8 to read:

9 23104. (a) Except as provided in subdivision (b),
10 whenever reckless driving of a vehicle proximately
11 causes bodily injury to any person other than the driver,
12 the person driving the vehicle shall, upon conviction
13 thereof, be punished by imprisonment in the county jail
14 for not less than 30 days nor more than six months or by
15 a fine of not less than two hundred twenty dollars (\$220)
16 nor more than one thousand dollars (\$1,000), or by both
17 the fine and imprisonment.

18 (b) Any person convicted of reckless driving which
19 proximately causes great bodily injury, as defined in
20 Section 12022.7 of the Penal Code, to any person other
21 than the driver, who previously has been convicted of a
22 violation of Section 23103 as specified in Section 23103.5,
23 23104, 23109, 23152, or 23153, shall be punished by
24 imprisonment in the state prison and by a fine of not less
25 than two hundred twenty dollars (\$220) nor more than
26 one thousand dollars (\$1,000).

27 (c) Probation shall not be granted to, nor shall
28 execution or imposition of the sentence be suspended for,
29 a conviction of a violation of this section. There shall not
30 be a commitment to any facility other than the state
31 prison.

32 ~~SEC. 9.~~

33 SEC. 10. Section 23180.5 is added to the Vehicle Code,
34 to read:

35 23180.5. (a) A person who personally inflicts great
36 bodily injury, as defined in Section 12022.7 of the Penal
37 Code, on any person other than an accomplice, during the
38 commission of an act in violation of Section 23153, upon
39 conviction *of that violation, in addition and consecutive*
40 *to the punishment prescribed for the violation of Section*

1 23153 of which he or she has been convicted, shall be
2 punished pursuant to Section 12022.7 of the Penal Code
3 for each victim. ~~That punishment shall be in addition and~~
4 ~~consecutive to the punishment imposed for the violation~~
5 ~~of Section 23153, and shall not whose injury qualifies~~
6 ~~under Section 12022.7 of the Penal Code.~~

7 (b) ~~The additional term or terms pursuant to Section~~
8 ~~12022.7 of the Penal Code shall be in addition to any other~~
9 ~~punishment provided by law, and shall not be limited by~~
10 ~~any other provision of law. However, if more than one~~
11 ~~injury is found to have been inflicted on a victim, only the~~
12 ~~greatest applicable enhancement shall apply as to that~~
13 ~~victim.~~

14 ~~(b) more than one injury enhancement is found to be~~
15 ~~true as to a particular victim, only the greatest~~
16 ~~enhancement shall be imposed for that victim.~~

17 (c) ~~The court shall not strike a finding that brings a~~
18 ~~person within the provisions of this subdivision or an~~
19 ~~allegation made pursuant to this subdivision.~~

20 (d) ~~Probation shall not be granted nor shall execution~~
21 ~~or imposition of the sentence be suspended for an~~
22 ~~enhancement imposed pursuant to this section. There~~
23 ~~any violation of Section 23153 where at least one~~
24 ~~enhancement pursuant to Section 12022.7 of the Penal~~
25 ~~Code is found to be true. There shall not be a~~
26 ~~commitment to any facility other than the state prison.~~

27 ~~SEC. 10.~~

28 SEC. 11. Section 23185 of the Vehicle Code is
29 repealed.

30 ~~SEC. 11.~~

31 SEC. 12. Section 23190 of the Vehicle Code is
32 amended to read:

33 23190. (a) If any person is convicted of a violation of
34 Section 23153 and the person ~~previously has been~~
35 ~~convicted of~~ has one or more separate violations of
36 Section 191.5 or paragraph (3) of subdivision (e) of
37 Section 192 of 191.5, paragraph (1) or (3) of subdivision
38 (c) of Section 192, or subdivision (a) or (c) of Section
39 192.5, of the Penal Code, or of Section 23103, as specified
40 in Section 23103.5, or Section 23152 or 23153, or any

1 combination of these violations, *which resulted in*
 2 *convictions*, that person shall be punished by
 3 imprisonment in the state prison for a term of four, six, or
 4 eight years and by a fine of not less than one thousand
 5 fifteen dollars (\$1,015) nor more than five thousand
 6 dollars (\$5,000). The person's privilege to operate a motor
 7 vehicle shall be revoked by the Department of Motor
 8 Vehicles pursuant to paragraph (6) of subdivision (a) of
 9 Section 13352.

10 (b) If any person is convicted under subdivision (a),
 11 ~~and the person previously has been convicted of four or~~
 12 ~~and the person has four or more separate violations of~~
 13 ~~Section 191.5 or paragraph, paragraph (1) or (3) of~~
 14 subdivision (c) of Section 192, *or subdivision (a) or (c) of*
 15 *Section 192.5*, of the Penal Code, or of Section 23103, as
 16 specified in Section 23103.5, or Section 23152 or 23153, or
 17 any combination of these violations, *which resulted in*
 18 *convictions*, that person shall be punished, in addition and
 19 consecutive to the sentences imposed under subdivision
 20 (a), by an additional term of imprisonment in the state
 21 prison for three years.

22 The enhancement allegation provided in the
 23 subdivision shall be pleaded and proved as provided by
 24 law.

25 (c) Probation shall not be granted nor shall execution
 26 or imposition of the sentence be suspended for a
 27 conviction ~~imposed~~ *punished* pursuant to this section.
 28 There shall not be a commitment to any facility other
 29 than the state prison. ~~Any~~

30 (d) Any person convicted of Section 23153 punishable
 31 under this section shall be designated as an habitual traffic
 32 offender for a period of three years, subsequent to the
 33 conviction. The person shall be advised of this designation
 34 pursuant to subdivision (b) of Section 13350.

35 ~~(d)~~

36 (e) Any person confined in state prison under this
 37 section shall be ordered by the court to participate in an
 38 alcohol or drug program, or both, that is available at the
 39 prison during the person's confinement.

40 ~~SEC. 12.~~

1 *SEC. 13. Section 2 of Proposition 184, as approved by*
2 *the voters at the November 8, 1994, general election, is*
3 *amended to read:*

4 SECTION 2. All references to ~~existing~~ statutes are to
5 statutes as they ~~existed on June 30, 1993~~ exist on January
6 1, 1997.

7 *SEC. 14. No reimbursement is required by this act*
8 *pursuant to Section 6 of Article XIII B of the California*
9 *Constitution because the only costs that may be incurred*
10 *by a local agency or school district will be incurred*
11 *because this act creates a new crime or infraction,*
12 *eliminates a crime or infraction, or changes the penalty*
13 *for a crime or infraction, within the meaning of Section*
14 *17556 of the Government Code, or changes the definition*
15 *of a crime within the meaning of Section 6 of Article*
16 *XIII B of the California Constitution.*

17 Notwithstanding Section 17580 of the Government
18 Code, unless otherwise specified, the provisions of this act
19 shall become operative on the same date that the act
20 takes effect pursuant to the California Constitution.

